IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

AS.No. 515 of 1994()

OS.14/1988 of SUB COURT, KASARAGOD
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APPELLANT - DEFENDANT:

E. KRISHNA MENON BHAT,
S/O. MAHALINGA BHAT,
NORALA HOUSE, P.O., MAIPADY,
KASARGOD TALUK.

BY ADV. SRI D KRISHNA PRASAD

RESPONDENTS - SUPPLEMENTAL PLAINTIFFS 2 TO 5:
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1. FATHIMA, W/O. ABDUL MAJID SAHAB.

2. MOHAMMED NIZAM, S/O. ABDUL MAJID SAHAB.

3. MOHAMMED RIAS, S/O. DO. DO.

4. NASEEN BANNU, D/O. DO. DO.

THE RESPONDENTS ARE RESIDING AT
MANIMUNDA, UPPALA VILLAGE, KASARGOD
TALUK, P.O.UPPALA, KASARGOD DISTRICT.

BY ADV. SRI M C SEN, SRI JAYAPRAKASH SEN

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 515 OF 1994

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Dated this the 26th day of November, 2007

J U D G M E N T

Defendant in O.S. No.14 of 1988 on the file of the Sub Court, Kasargod, is the appellant. Appeal is filed against the decree and judgment passed by the court below by which the court below allowed the plaintiffs to recover an amount of Rs.25,000/- with 6% interest from the date of suit.

2. Short facts necessary for the disposal of the appeal are as follows: Deceased first plaintiff filed the suit for money on the following averments. On 8.8.1987 defendant borrowed an amount of Rs.25,000/- from the deceased first plaintiff and executed a hand note (kaikagada) in his favour for the said amount. It is in the nature of a receipt. The loan was availed for the purpose of mechanical and electrical works which the defendant had undertaken. In spite of repeated demands, defendant did not repay the amount. Finally first plaintiff sent a notice through a lawyer. Though the defendant received the same, no reply was send. Amount was not repaid. Hence the

suit for recovery of Rs.25,000/- with 6% interest.

3. Defendant filed a written statement contending that neither on 8.8.1987 or on any other date he borrowed any amount from the deceased first plaintiff. It was contended that no amount was due to the deceased first plaintiff from him. It was further contended that the alleged hand note does not evidence any loan and the same was given at the request of the deceased first plaintiff and one Abdul Karim Saheb. The averment that it was in the nature of a receipt was denied. It was contended that there was no demand and he could not send a reply as the notice was misplaced. He prayed for the dismissal of the suit.

4. On the side of plaintiffs, P.Ws1 and 2 were examined and Exhibits A1 to A4 proved and marked. On the side of defendant, he gave evidence as D.W.1. Trial court accepted the evidence of the plaintiffs and decreed the suit. Challenging that decree and judgment, this appeal is filed.

5. Learned counsel appearing for the appellant has strenuously argued before me that the evidence adduced in this case clearly establishes that appellant did not avail any

loan from the deceased first plaintiff. It is argued that P.W.2 gave an amount of Rs.25,000/- for purchasing certain electrical goods from Coimbatore. It is argued that evidence rendered by the appellant would show that he purchased those goods and supplied the same and the account was settled. Learned counsel appearing for the respondents has argued that in the written statement the appellant had no case that the amount entrusted with him was for purchase of electrical goods for the deceased first plaintiff. It is also argued that apart from the interested testimony of the appellant, there is absolutely no material to show that it was the appellant who effected wiring of the house of the deceased first plaintiff and he purchased or supplied any electric goods to the deceased first plaintiff.

6. The recitals in Exhibit A1 shows that on 8.8.1987 appellant received an amount of Rs.25,000/- from the deceased first plaintiff for his mechanical, electrical and other necessities. Before filing the suit a notice was issued to the appellant. Admittedly, no reply notice was send. Evidence of P.Ws.1 and 2 coupled with Exhibit A1 shows that on 8.8.1987

appellant received an amount of Rs.25,000/-. According to the appellant that was not a loan, but the amount was received for purchase of electrical goods for the deceased first plaintiff and another person. Appellant had no case in his written statement that the amount entrusted with him was for purchase of electrical goods. That was a case developed by him at the time of evidence. According to him, certain amounts were due to him from the deceased first plaintiff and he paid Rs.3,000/- and the matter was settled. There was absolutely no material to show that the appellant purchased any electrical goods and supplied the same to the deceased first plaintiff. Further, it is admitted by the appellant himself, who was examined as D.W.1, that he had no document to show that he supplied electrical goods to the deceased first plaintiff or P.W.2. He deposed that he was maintaining a diary, but that diary was not produced. If, as a matter of fact, wiring of the house of the deceased first plaintiff was effected by the appellant, that was a matter which could have been proved. So merely on the ground that the word loan is not written in Exhibit A1, it is not possible to

hold that no amount was due from the appellant to the deceased first plaintiff. Admittedly, he received an amount of Rs.25,000/-. He pleaded discharge. The burden is entirely upon the appellant to prove the case. The finding of the court below that the respondents are entitled to get a decree for Rs.25,350/- with 6% interest on Rs.25,000/- from the date of suit till date of realisation is correct and does not call for any interference. The appeal is without any merit and the same is only to be dismissed.

7. In the result, appeal is dismissed.

Civil Miscellaneous Petition Nos.3144 and 4070 of 1994 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 515 OF 1994

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J U D G M E N T

26TH NOVEMBER, 2007